

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4081 OF 2007

J.V.Constructions & Developers		Petitioner
V/s		
Bombay Gow Rakshak Trust & Ors.		Respondent.

Mr.V.A. Thorat, Sr. Adv. I/by Ms.Gauri Jadhav with Mr.V.S. Sugdhare, Adv. for the petitioner.

Mr.Shrihari Anney, Sr.Adv. With Ms.Farzana Behramkamdin i/by M/s.FZB & Associates for the respondent No.2.

Mr.Pravin Samdhani with Ms.Bhakti Popat i/by M/s.Wadia Ghandi, Adv. For the respondent No.1.

Mr.R.M.Patne, AGP for respondent No.3.

CORAM: A.P.DESHPANDE, J.

1/11/07

PC:

The respondent No.1 is a public trust registered under the provisions of the Bombay Public Trusts Act, 1950. Respondent No.1-Bombay Gow Rakshak Trust purchased movable and immovable property which comprises of dairy so also agricultural and non-agricultural piece of land pursuant to an order dated 12.11.03 passed by this Court in Misc. Application No.361/03 filed by Bank of India. Respondent No.1 has purchased the subject property which comprises of only immovable property for a consideration of Rs.4,25,00,000/-, of which the conveyance is yet to be executed. As the 1st respondent found it not expedient to

hold the said property had entered into an agreement with respondent No.2-M/s.Quality Dairy Private Limited for sale of property for a consideration of Rs.4,70,00,000/- which offer was raised by the 2nd respondent by a sum of Rs.5,00,000/- when the application moved by the respondent No.1 under section 36 of the Bombay Public Trusts Act was being considered by the Charity Commissioner. Thus the property agreed to be sold by respondent No.1 to respondent No.2 is for consideration of Rs.4,75,00,000/-. The respondent No.1 has also agreed to suffer all the liabilities in regard to the said property such as taxes arrears of electricity bills etc. The application moved by respondent No.1 for seeking permission of the Charity Commissioner under section 36 was granted by Charity Commissioner vide order dated 12.1.07. Perusal of the operative part of the order reveals that the permission granted was subject to certain terms and conditions one of which was that the `order is subject to any provision or restriction in any law for the time being in force.' The respondent No.2 realizing that permission was required to be obtained from the Collector under the provisions of Bombay Tenancy Act, it moved an application before the Collector. The permission sought by respondent No.2 was rejected. Yet another application was moved by the 2nd respondent to the Director, Industry for seeking permission under the provisions of the Bombay Tenancy & Agricultural Lands Act but the same was also turned down. In this situation the respondent No.2 and its directors approached respondent No.1-trust making a request to move the Charity

Commissioner seeking modification of the order granting permission under section 36 of the Bombay Public Trusts Act to alienate/transfer the property in the name of the respondent No.2. The modification sought for was that the portion of the property be transferred in favour of company viz. Respondent No.2 and the agricultural land be transferred in the name of the directors of the company. As requested by respondent No.2 and its directors respondent No.1 moved an application for modification of the order dated 12.1.07. Application for modification was rejected by the Charity Commissioner by an order dated 9.2.07 which reads thus:

“Taken on record, perused heard Ld. Advocate Shri Lad. Since such description of property and mode of transfer was not mentioned in the original application prayer herein cannot be granted.

Hence application rejected liberty to applicant to apply for revocation of earlier order and to file fresh application.”

2. After passing of the order on 9.2.07 respondent No.1-Trust has moved yet another application pursuant to the liberty granted by the Charity Commissioner under order dated 9.2.07. In the said application dated 25.7.07 prayer is made for grant of permission under section 36 for sale and transfer of portion of property in the name of the Company viz. Respondent No.2 and the remaining property in the name of directors of the Company. I am informed that the application dated 25.7.07 is pending consideration with the Charity Commissioner.

3. The present petitioner J.V.Constructions and Developers is a partnership firm which claims to be keenly interested in purchasing the subject property. The grievance of the present petitioner is that at no point of time any public advertisement was issued with a view to sale the said property and hence interested parties did not have any opportunity to bid for the same. Learned counsel for the petitioner has contended by placing reliance on Full Bench judgment of this Court in the case of Sailesh Developers & Anr. V/s Joint Charity Commissioner, Maharashtra & Ors., 2007 (3) Mh.L.J. 717 that the property held by the public trust is required to be treated at par with public property and therefore while alienating such property principles laid down by the Apex Court in the case of Ram & Shyam Co. v/s State of Haryana, (1985) 3 SCC 267 need to be adhered to. The main grievance is that the trust property should not have been permitted to be sold without a public notice in that regard. The next submission is that the consideration for which the trust property is being alienated is not for just and fair market value but is too much on the lower side. It is submitted that the Charity Commissioner being custodian of the trust need to bear in mind the interest of trust. The petitioner with a view to show its bonafides has placed on record an affidavit and undertaking expressing readiness and willingness to purchase the subject property for consideration of Rs.7,21,00,000/- and to substantiate the petitioners keenness in making the said offer pay orders in the sum of Rs.7,21,00,000/- are drawn on IDBI bank in the name of the respondent No.1-Trust. The said pay orders are

purchased on 23.2.07 from the bank and are revalidated after expiry of the term and are kept alive till date. It would not be out of place to notice that the respondent No.2 has agreed to purchase the subject property for a consideration of Rs.4,75,00,000/- whereas the petitioner has shown its readiness and willingness to purchase the suit property at a minimum of Rs.7,21,00,000/-. The petitioner is also ready to suffer all the liabilities qua the subject property such as taxes, arrears of electricity bills etc.

4. Reverting back to the chain of events, application moved by the respondent-trust seeking modification of the order dated 12.1.07 and 9.2.07 passed by the Charity Commissioner is pending. The said application is obviously referable to the provisions under section 36 of the Bombay Public Trusts Act and this position is not disputed by the learned senior counsel appearing for respondent No.2. Application dated 25.7.07 is in fact an application filed under section 36 pursuant to liberty granted by the Charity Commissioner vide order dated 9.2.07. The present petitioner without approaching the Charity Commissioner has straightway filed the present writ petition calling in question the legality and validity of the order passed by the Charity Commissioner dated 12.1.07 by contending that permission granted by the Charity Commissioner by said order was without any notice to public at large though the property belongs to the trust and ought to have been sold after public notice. As stated herein above subsequent to the filing of writ petition as major event has taken place and the same is filing of an application by respondent No.1-trust before the

Charity Commissioner on 25.7. 07 seeking modification of the orders dated 12.1.07 and 9.2.07 which in substance is an application under section 36 of the Bombay Public Trusts Act, if read in the light of order dated 9.2.07. The said application dated 25.7.07 is still pending with Charity Commissioner, hence I need not adjudicate the issue raised in the present writ petition, as the petitioner could be relegated to Forum of the Charity Commissioner who is seized of the application filed on 25.7.07 by respondent No.1-trust. Leaving all questions raised in the present writ petition open to be agitated before the Charity Commissioner the present writ petition deserves to be dismissed. It is made clear that it shall be open for the petitioner to approach the Charity Commissioner in the pending application filed by respondent No.1-trust dated 25.7.07. It shall also be open for the present petitioner to substantiate its offer before the Charity Commissioner and needless to mention that the Charity Commissioner shall decide the application filed by respondent No.1 dated 25.7.07 after taking into consideration the submissions of the present petitioner. With this clarification writ petition stands disposed of. Parties to act on authenticated copy of this order.

1.11.07